

**Before the  
Federal Communications Commission  
Washington, D.C.**

**In the Matter of:**

|   |   |                         |
|---|---|-------------------------|
| Application for Review of decisions     | ) |                         |
| of the Schools and Libraries Division   | ) |                         |
| of the Universal Service Administrative | ) |                         |
| Company for Coahoma County Public       | ) | Application Numbers     |
| Schools, Clarksdale, Mississippi        | ) | 428366, 428178, 428396, |
| 427024                                  | ) |                         |
|   | ) |                         |
| Joint Board on Universal Service        | ) | CC Docket No. 02-6      |

**Application for Review by Coahoma County Public Schools, Clarksdale, Mississippi**  
**Billed Entity Number 128533, Form 471 Application Numbers listed above and funding requests: 1184575, 1186621, 1186602, 1186225, 1186254, 1186353, 1186657, 118675, 1186689, 1186519, 1186577, 1186711, 1186731, 1186744, 1186756, 1186770, 1186781, 1186808, 1186836, 1186855, 1186884, 1186938, 1186957, 1186970, 1186989, 1187001, 1187269, 1187423, 1187430.**

In accordance with the Code of Federal Regulations Title 47, Part 57, Section 54.719, Coahoma County Public Schools (Coahoma) hereby requests the Federal Communications Commission (Commission) review the decision of the Universal Service Administrative Company (Administrator) captioned above.

**Coahoma County Public Schools**

Coahoma Public Schools is an impoverished school district in rural Mississippi serving 1,900 students at six schools, each with an E-Rate discount of 90 percent, with approximately 100 percent of students eligible for the National School Lunch Program. The district discount rate is 90 percent. The annual school budget is modest and insufficient to provide our

teachers and students with state-of-the-art technology found in more affluent school systems. Without E-Rate discounts, affordable telephone service, telephone systems or improvements to Local Area Networks in our schools would be out of reach. Discounts on basic maintenance of eligible equipment helps augment our technology budget. The E-Rate program was structured specifically to make advanced services such as those here under appeal to school districts such as Coahoma.

Throughout the E-Rate program Coahoma has applied for discounted service in a fiscally responsible manner. Unlike some high-discount schools or libraries, we have never used our discount rate to abuse the program or order extravagant services. Indeed, the equipment and services here under appeal are reasonable and priced at competitive rates either through statewide contracts or competitive bids. Though modest, local and state resources are sufficient to make efficient and effective use of requested equipment and services.

## **Background**

The Year 2004 E-Rate funding request for Coahoma schools included requests for discounted basic telephone service, purchase of PBX telephone systems in each school, upgrades to Local Area Networks, maintenance on eligible equipment, and server software licenses.

Form 471 applications were submitted to the Administrator via the online submission system. Certification pages were signed and submitted on

February 3, 2004. Item 21 attachments were submitted to the Administrator on February 9, 2004. Item 21 attachments detailed each funding request and were submitted in the format suggested on the Administrator's Web site.

On July 13, 2004 the Administrator, represented by Selective Reviewer Al Arauz, initiated a Selective Review of all Coahoma applications for Fund Year 2004. Coahoma responded in a timely basis. On September 27, 2004, Mr. Arauz sent Coahoma a three page follow-up request for additional information for the Selective Review. Mr. Arauz and other Administrative reviewers continued to request additional information or clarifications of information through early 2005. Finally, on March 24, 2005 the Administrator issued Funding Commitment Decision Letters denying funding for all but basic telephone service.

The stated reason for denial by the Administrator was "Insufficient support resources." The explanation for denial stated: "During application review, you were asked to demonstrate that when you filed your Form 471 you had secured access to the funds needed to pay your portion of the charges and you were unable to do so."

Under separate cover the Administrator expanded its explanation saying: "You did not demonstrate that you have secured the financial resources to pay your share and the estimated investments you reported for Hardware, Professional Development, software, Retrofitting and Maintenance."

Coahoma filed an appeal with the Administrator, showing that the school district did have sufficient resources to make effective use of requested services in addition to the non-discounted E-Rate eligible services. On August 4, 2005 the Administrator denied this appeal narrowing the reason for denial to the Administrator's assessment that Coahoma did not budget sufficient resources to pay the non-discounted portion. Specifically, the Selective Review failure and funding denials hinged on the Administrator's belief that \$60,000 budgeted for the non-discounted portion of these applications had not been secured by Coahoma. The Administrator further mistakenly found that information provided on appeal was contradictory to information provided during Selective Review.

With this appeal, we will show that communication between Coahoma and the Administrator during Selective Review would not lead to the conclusion that funds had not been secured or even the fund year from which they were earmarked. Because the Administrator was not clear with requests for information and used equally unclear responses from Coahoma to base its decision, in accordance with a recent ruling in Fayette County Schools, the Administrator must continue the dialogue until confusion could be eliminated. The Administrator failed to request information in a clear manner and acted on incorrect assumptions based on applicant responses to unclear requests. As such, these applications must be remanded to the Administrator for further consideration.

All pertinent documents were submitted in the appeal to the Schools and Libraries Division and are on file with them.

### **Non-Discounted Portion of Year 2004 Requests**

The Administrator, in its denial on appeal, cited only the question of \$60,000 budgeted from Unrestricted Grants-in-aid Revenue as the shortcoming from the Selective Review. In its explanation, the Administrator states: “You were asked to explain whether the \$60,000 budgeted as Unrestricted Grants-in-aid Revenue was from previous funding year’s E-rate reimbursement or current Funding Year (2004-05) reimbursement.” The facts will show that the funds were from Fund Year 2003, or “last” year; however, the funds were received by the district in fiscal year 2004 or “this” fund year for the purpose of district accounting.

The Administrator was aware the non-discounted portion of funding requests was derived from E-Rate discount reimbursements. Rather than asking general questions such as whether the funds were from “this” or “last” year, the Administrator should have requested the Funding Request Numbers representing the funds in question. The non-discounted portion used to pay the ten percent match for the applications under appeal were generated from Funding Request Numbers 1031652, 1009151, and 1034817 – all funded and all from Fund Year 2003 or “last” fund year.

Correspondence between Coahoma and the Administrator regarding the Selective Review began in late July 2004 and continued on and off until

early 2005. The Administrator requested clarification on a number of Selective Review responses. On September 27, 2004, on Administrator letterhead, the selective reviewer sent an official follow-up request for information on Professional Development, Retrofitting, and Vendor Selection. On October 4, Coahoma asked the selective reviewer if he had received the Coahoma response. On October 5, the selective reviewer responded that the response had been received. On January 26, 2005 in another letter addressed on Administrator letterhead, the selective reviewer asks: "Can you explain whether that \$60,000 is from previous year's erate reimbursement or the current year (2004-05) reimbursement? Also, if those funds are from the current year (2004-05), please indicate the specific amount of that \$60,000 that will be utilized to pay the districts share..." Coahoma responded on January 27: "My business manager explained it to me this way. This projected \$60,000 is estimated for this year but it's based on the amount of reimbursement we received last year. The entire \$60,000 will be used to pay our district's share of \$65,692.74. No grants are used in this figure." The selective reviewer responded immediately via email asking: "So the \$60,000 has not been received yet ? or it had not been received at the time of document's preparation?" Coahoma immediately responded "No it hasn't been received. This is only projected based on the year before." This rapid exchange lead the reviewer to conclude that the district's share was derived from 2004-05 funding; however, that conclusion was based on inconclusive

responses from Coahoma, which never specified a fund year in responses. The Administrator incorrectly concluded the funds were from 2004-05. The funding had indeed been received in August 2004 and were based on BEAR forms submitted on June 29, 2004.

E-Rate discounts, when realized through the BEAR form process, are typically received in the fiscal year following the E-Rate funding year. For example, a funded application for Fund Year 2003 (2003-04) may have a single BEAR form filed after receipt of the final service provider invoice – usually in July, the first month of the next fund year. Thus, the entire discounted amount from Fund Year 2003 will be booked as income for Year 2004. This can be a considerable sum for high-discount applicants such as Coahoma. When posed with the question of the year of the E-Rate fund source, a business manager may, with complete certainty, explain that the E-Rate funds in question are “from the current year.” It should also be noted that this exchange occurred approximately one year after the application was submitted to the Administrator for review and in the midst of preparation of the E-Rate Year 2005 application. It is easily understandable how the question could be confused. Had the Administrator asked for specific Funding Request Numbers as the source of the non-discounted portion, there would have been absolutely no confusion regarding the year of the funding source.

The Commission recently ruled in Fayette, West Virginia that the Administrator could not deny an applicant funding if the applicant had

responded to Administrator inquiries, but the Administrator could not determine the eligibility of a fund request. The Administrator must continue to request information from the applicant until certainty could be achieved.<sup>1</sup> This appeal is strikingly similar to the circumstances in Fayette, in that the Administrator did not absolutely know the source of funding and did not know with certainty the fund year for the non-discounted portion.

### **Item 25 Review**

Applicants are required to swear to a number of certifications when submitting E-Rate forms to the Administrator. One such certification on the Form 471 is Item 25, where applicants certify that they have secured all resources to pay the non-discounted portion of E-Rate funding requests and other expenses to make effective use of discounted services.<sup>2</sup>

The Item 25 Selective Review was instituted in reaction to revelations that some applicants did not pay the non-discounted portion of requested services or requested excessive products or services that could not be supported using local or state funds. The FCC determined that if an applicant failed an Item 25 review, all funding requests for the applicant in the Item 25 review year would be denied – thus linking all requests to the

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<sup>1</sup> Request for Review by Fayette County School District, DA 05-2176, Released July 27, 2005 at 4 “We instruct SLD to provide Fayette with a detailed inquiry of the documents and information necessary for SLD to determine the eligibility of Fayette’s request for funding.”

<sup>2</sup> Form 471 Item 25 certification language: “The entities listed on this application have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections, necessary to make effective use of the services purchased, as well as to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. I certify the Billed Entity will pay its non-discount portion of the cost of the goods and services to the service provider(s).”



applicants' ability to pay the non-discounted portion and providing sufficient other resources to make "effective use of discounted services." The only exception to linking denials is "basic" telephone local and long distance service.<sup>3</sup> Neither the Commission nor the Administrator have issued guidelines detailing acceptable minimum levels of support required by the Item 25 Certification, beyond sufficient budget to pay the actual non-discounted portion of requested services.

What constitutes "sufficient" support would vary widely depending on the services ordered, the level of baseline infrastructure, the existing knowledge of staff, source of training or support, and a myriad of other factors. Some items, such as PBX's require virtually no additional support beyond payment of the non-discounted portion of funding requests, as a new phone system would not require staff training or technical expertise. A significant portion of funding requests here under appeal are for PBX's installed at each school.

E-Rate discounted maintenance service on eligible equipment would actually mitigate applicants' Item 25 compliance requirements, as the applicant could reduce personnel and training costs because local support would be replaced with contracted support provided at discounts. The applicant would be required to pay non-discounted charges, but would need absolutely no additional local support for maintenance contracts. A

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<sup>3</sup> Request for Review by United Talmudical Academy CC Dockets no 96-45 and 97-21, 2000

significant portion of funding requests is for maintenance on eligible equipment here under appeal.

The Commission has not established regulations outlining non-discount support requirements. Again, Wireline Competition Bureau Orders under Delegated Authority and Commission Orders have not addressed specific definitions or criteria that would constitute sufficient non-discount support, beyond the actual non-discounted monetary amount.

The Administrator has improperly established secret criteria for evaluating Item 25 reviews. The Administrator rationalizes this decision based on the incorrect assumption that publication of such information would encourage additional waste, fraud, or abuse of the E-Rate program, assuming applicants would parrot recommended non-discount support levels set by the Administrator. Contrary to the Administrator's stance, applicants would benefit immeasurably from public disclosure of a rubric outlining sufficient support for requested services. Armed with such knowledge, applicants with limited technology knowledge would be able to better prepare technology plans, design efficient networks, provide training for employees, and provide adequate staffing for varying levels of technology. As currently implemented, 30,000 applicants are essentially planning and implementing programs in a vacuum of advice by the Administrator.

Further, establishment of minimum levels for support must be opened for public comment and evaluation before being used by the Administrator for

evaluation. The Administrator may or may not be qualified to determine what is or is not sufficient for support. Administrator qualifications and internal training practices have been called into question by many E-Rate experts and the Commission routinely overturns Administrator decisions. Until Administrator evaluation criteria is opened for public debate, the Commission cannot uphold Administrator funding denials based on failed Item 25 reviews – beyond support for the actual non-discount funding amount. To the extent the Administrator has determined Coahoma has not documented support for requested services, the Commission must overturn the decision, whether provided during the initial Item 25 response or the Appeal to the Administrator. The only allowable evaluation for an Item 25 review must be the applicant's showing of ability to pay the non-discounted portion of requested services. The Commission must publish Item 25 review criteria and review public comment as is currently done with the Eligible Services List.

## **Conclusion**

The apparent final decision for failing Coahoma during the Item 25 review appears to rest with confusion over the source of approximately \$60,000 in local funds to support the non-discounted portion of requested services. The source of funds was described as “E-Rate discounts.” At no time

during review did Coahoma expressly state that funds were from Fund year 2004-05. The Administrator incorrectly concluded the funds were from the 2004-05 fund year and did not request further clarification.

To the extent the Administrator denied Coahoma's application for failure to provide sufficient support of E-Rate services beyond the non-discounted portion, the Commission must overturn the denial because the Administrator has not established or made criteria for reviewing applications public.

Coahoma applied for reasonable services to bring the school district communication infrastructure to a level enjoyed by the vast majority of schools in the nation. Coahoma had sufficient resources to pay the non-discounted portion and has sufficient resources to make efficient use of requested services.

These funding requests should be remanded to the Administrator for further consideration.

Respectfully Submitted this 28th day of September, 2005,

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